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CHAMBER ACTION

1 The Future of Florida's Families Committee recommends the
2 following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to guardianship; amending s. 737.2065,
8 F.S.; excepting the contesting of trust validity by
9 property guardians of incapacitated grantors from a
10 prohibition against commencing certain actions; amending
11 s. 744.107, F.S.; revising provisions relating to court
12 monitors; requiring orders of appointment and monitors'
13 reports to be served upon certain persons; authorizing the
14 court to determine which persons may inspect certain
15 orders or reports; authorizing the court to enter any
16 order necessary to protect a ward or ward's estate;
17 requiring notice and hearing; authorizing a court to
18 assess certain costs and attorney's fees under certain
19 circumstances; creating s. 744.1075, F.S.; authorizing a
20 court to appoint a court monitor on an emergency basis
21 under certain circumstances; requiring the court to make
22 certain findings; requiring the monitor to report findings
23 and recommendations; providing duties of the court

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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24 relating to probable cause for the emergency appointment;
25 authorizing the court to determine which persons may
26 inspect certain orders or reports; providing requirements
27 for a court order to show cause for the emergency
28 appointment; specifying a time period for a monitor's
29 authority; providing for extending such time period;
30 authorizing the court to issue certain injunctions or
31 orders for certain purposes; requiring the court to
32 provide copies of such injunctions or orders to all
33 parties; authorizing the court to impose sanctions or take
34 certain enforcement actions; providing for payment of
35 reasonable fees to the monitor; prohibiting certain
36 persons from receiving certain fees; authorizing a court
37 to assess certain costs and attorney's fees under certain
38 circumstances; amending s. 744.331, F.S.; requiring a
39 court to determine whether acceptable alternatives to
40 guardianship of incapacitated persons exist under certain
41 circumstances; requiring appointment of a guardian if no
42 alternative exists; prohibiting such appointment if an
43 alternative exists; specifying circumstances of
44 nonexistence of an alternative; preserving certain court
45 authority to determine exercise of certain powers of
46 attorney; amending s. 744.441, F.S.; requiring a court to
47 make certain findings in a ward's best interest before
48 authorizing a guardian to bring certain actions; requiring
49 a court to review certain continuing needs for guardians
50 and delegation of a ward's rights; creating s. 744.462,
51 F.S.; requiring guardians to immediately report certain

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judicial determinations in certain guardianship proceedings; requiring a court to review certain continuing needs for guardians and delegation of a ward's rights under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 737.2065, Florida Statutes, is amended to read:

737.2065 Trust contests.--An action to contest the validity of all or part of a trust may not be commenced until the trust becomes irrevocable, except this section shall not prohibit such action by the guardian of the property of an incapacitated grantor.

Section 2. Section 744.107, Florida Statutes, is amended to read:

744.107 Court monitors.--

(1) The court may, upon inquiry from any interested person or upon its own motion in any proceeding over which it has jurisdiction, appoint a monitor. The court shall not appoint as a monitor a family member or any person with a personal interest in the proceedings. The order of appointment shall be served upon the guardian, the ward, and such other persons as the court may determine.

(2) The monitor may investigate, seek information, examine documents, or interview the ward and shall report to the court his or her findings. The report shall be verified and shall be

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80 served on the guardian, the ward, and such other persons as the
81 court may determine. ~~The court shall not appoint as a monitor a~~
82 ~~family member or any person with a personal interest in the~~
83 ~~proceedings.~~

84 (3) If it appears from the monitor's report that further
85 action by the court to protect the interests of the ward is
86 necessary, the court shall, after a hearing with notice, enter
87 any order necessary to protect the ward or the ward's estate,
88 including amending the plan, requiring an accounting, ordering
89 production of assets, freezing assets, suspending the guardian,
90 or initiating proceedings to remove a guardian.

91 (4) Unless otherwise prohibited by law, a monitor may be
92 allowed a reasonable fee as determined by the court and paid
93 from the property of the ward. No full-time state, county, or
94 municipal employee or officer shall be paid a fee for such
95 investigation and report. If the court finds the motion for
96 court monitor to have been filed in bad faith, the costs of the
97 proceeding, including attorney's fees, may be assessed against
98 the movant.

99 Section 3. Section 744.1075, Florida Statutes, is created
100 to read:

101 744.1075 Emergency court monitor.--

102 (1) A court, upon inquiry from any interested person or
103 upon its own motion, in any proceeding over which the court has
104 jurisdiction, may appoint a court monitor on an emergency basis
105 without notice. The court must specifically find that there
106 appears to be imminent danger that the physical or mental health
107 or safety of the ward will be seriously impaired or that the

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ward's property is in danger of being wasted, misappropriated, or lost unless immediate action is taken. The scope of the matters to be investigated and the powers and duties of the monitor must be specifically enumerated by court order.

(2) Within 15 days after the entry of the order of appointment, the monitor shall file his or her report of findings and recommendations to the court. The report shall be verified and may be supported by documents or other evidence.

(3) Upon review of the report, the court shall determine whether there is probable cause to take further action to protect the person or property of the ward. If the court finds no probable cause, the court shall issue an order finding no probable cause and discharging the monitor.

(4) If the court finds probable cause, the court shall issue an order to show cause directed to the guardian or other respondent stating the essential facts constituting the conduct charged and requiring the respondent to appear before the court to show cause why the court should not take further action. The order shall specify the time and place of the hearing with a reasonable time to allow for the preparation of a defense after service of the order.

(5) The authority of a monitor appointed under this section expires 60 days after the date of appointment or upon a finding of no probable cause, whichever occurs first. The authority of the monitor may be extended for an additional 30 days upon a showing that the emergency conditions still exist.

(6) At any time prior to the hearing on the order to show cause, the court may issue a temporary injunction, a restraining

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136 order, or an order freezing assets, may suspend a guardian or
137 appoint a guardian ad litem, or may issue any other appropriate
138 order to protect the physical or mental health or safety or
139 property of the ward. A copy of all such orders or injunctions
140 shall be transmitted by the court or under its direction to all
141 parties at the time of entry of the order or injunction.

142 (7) Following a hearing on the order to show cause, the
143 court may impose sanctions on the guardian or his or her
144 attorney or other respondent or take any other action authorized
145 by law, including entering a judgment of contempt, ordering an
146 accounting, freezing assets, referring the case to local law
147 enforcement agencies or the state attorney, filing an abuse,
148 neglect, or exploitation complaint with the Department of
149 Children and Family Services, or initiating proceedings to
150 remove a guardian.

151 (8) Unless otherwise prohibited by law, a monitor may be
152 allowed a reasonable fee as determined by the court and paid
153 from the property of the ward. No full-time state, county, or
154 municipal employee or officer shall be paid a fee for such
155 investigation and report. If the court finds the motion for a
156 court monitor to have been filed in bad faith, the costs of the
157 proceeding, including attorney's fees, may be assessed against
158 the movant.

159 Section 4. Paragraphs (b) and (f) of subsection (6) of
160 section 744.331, Florida Statutes, are amended to read:

161 744.331 Procedures to determine incapacity.--

162 (6) ORDER DETERMINING INCAPACITY.--If, after making
163 findings of fact on the basis of clear and convincing evidence,

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the court finds that a person is incapacitated with respect to the exercise of a particular right, or all rights, the court shall enter a written order determining such incapacity. A person is determined to be incapacitated only with respect to those rights specified in the order.

(b) When an order is entered which determines that a person is incapable of exercising delegable rights, the court must consider and find whether there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person. A guardian must be appointed to exercise the incapacitated person's delegable rights unless the court finds that there is an alternative. A guardian shall not be appointed if the court finds that there is an alternative to guardianship that will sufficiently address the problems of the incapacitated person ~~In any order declaring a person incapacitated the court must find that alternatives to guardianship were considered and that no alternative to guardianship will sufficiently address the problems of the ward.~~

(f) Upon the filing of a verified statement by an interested person stating:

1. That he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and

2. A reasonable factual basis for that belief,
the trust, trust amendment, or durable power of attorney shall not be deemed to be an alternative to the appointment of a guardian. The appointment of a guardian shall not limit the

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192 court's authority to determine that certain authority granted by
193 a durable power of attorney is to remain exercisable by the
194 attorney in fact ~~When an order is entered which determines that~~
195 ~~a person is incapable of exercising delegable rights, a guardian~~
196 ~~must be appointed to exercise those rights.~~

197 Section 5. Subsection (11) of section 744.441, Florida
198 Statutes, is amended to read:

199 744.441 Powers of guardian upon court approval.--After
200 obtaining approval of the court pursuant to a petition for
201 authorization to act, a plenary guardian of the property, or a
202 limited guardian of the property within the powers granted by
203 the order appointing the guardian or an approved annual or
204 amended guardianship report, may:

205 (11) Prosecute or defend claims or proceedings in any
206 jurisdiction for the protection of the estate and of the
207 guardian in the performance of his or her duties. Before
208 authorizing a guardian to bring an action described in s.
209 737.2065, the court shall first find that the action appears to
210 be in the ward's best interests during the ward's probable
211 lifetime. If the court denies a request that a guardian be
212 authorized to bring an action described in s. 737.2065, the
213 court shall review the continued need for a guardian and the
214 extent of the need for delegation of the ward's rights.

215 Section 6. Section 744.462, Florida Statutes, is created
216 to read:

217 744.462 Determination regarding alternatives to
218 guardianship.--Any judicial determination concerning the
219 validity of the ward's trust, trust amendment, or durable power

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of attorney shall be promptly reported in the guardianship
proceeding by the guardian of the property. If the instrument
has been judicially determined to be valid, or if after the
appointment of a guardian a petition is filed alleging that
there is an alternative to guardianship that will sufficiently
address the problems of the ward, the court shall review the
continued need for a guardian and the extent of the need for
delegation of the ward's rights.

Section 7. This act shall take effect upon becoming a law.